

REMARKS

Examiner Chankong is thanked for discussing the case with the undersigned on August 15, 2007. At the interview, the undersigned explained the position outlined in more detail below, specifically, that the Peng reference cannot support a Section 103 rejection.

Claims 33 and 34 have been amended to address the Section 112 rejections thereof. These amendments are non-narrowing and do not add new matter. Nor is new matter added by the newly added claims.

The Section 103 rejection is improper and must be withdrawn. The rejection is improper for at least two reasons. First, as previously submitted, the Peng reference is not prior art to the present application. The present application claims priority to a United Kingdom application filed on June 30, 2000. A copy of the priority application is of record in the present application. The claimed invention is supported by the priority application; the Examiner is requested to note, for instance, the disclosure at page 6, lines 29-32 of the priority application.

The Peng reference has a filing date of February 1, 2001, which is later than the priority date of the present application. The Peng reference is not, by itself, available for consideration under 35 USC § 102(e).

Peng does claim priority to a provisional application filed in February of 2000. In the Office Action, there is no reference to the purported disclosure of the priority document. The Peng reference is cited against the present application only "if the provisional application properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. § 112, first paragraph." (M.P.E.P. 2136.03 (III)). It is respectfully submitted that it would be incumbent upon the Office to find support for the rejection in the Peng provisional application if the Office were

to attempt to enter a § 103 rejection. Because the Office Action does not rely on the provisional application, nor even refer to the provisional application, the rejection is improper.

Nor can the Peng provisional application (60/179,761, available via PAIR) can support a § 103 rejection. As will be evident upon a review of the Peng provisional application, this application appears to be a collection of technical literature that bears little resemblance to the issued Peng patent.

With respect to some of the pending claims, there is at least a second defect in the rejection. The Office Action acknowledges that the Peng reference does not disclose computing remuneration data by computing the payment to be made to a content provider on the basis of the level of successful downloads from the server. This deficiency is said to be supplied by the Srinivasan reference. Applicants respectfully disagree. It is unclear how the Srinivasan reference relates to the Peng et al. disclosure, and it is also unclear where “monitoring” is found in Srinivasan. The prior Examiner referred to column 6 in Srinivasan, but the cited disclosure is not seen. Nor is the relationship of Peng to Srinivasan apparent. Of course, because Peng is not properly applied as prior art, the rejection is improper in any case.

For these reasons, allowance is respectfully solicited.

Respectfully submitted,

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By: /Allen E. Hoover/
Allen E. Hoover
Reg. No. 37,354
BANNER & WITCOFF, LTD.
10 South Wacker Drive
Suite 3000
Chicago, IL 60606

Nokia No. 9764
Reply dated September 19, 2007
Response to Office Action Mailed May 9, 2007

Tel: (312) 463-5000
Fax: (312) 463-5001